

TAB 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMON CAUSE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 20-cv-2023 (CRC)

ORDER

On July 21, 2020, President Donald J. Trump released a memorandum (the “Memorandum”) regarding the 2020 Census with the subject line, “Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census.” 85 Fed. Reg. 44,679, 44,680 (July 23, 2020). The Memorandum directs Secretary of Commerce, who oversees the U.S. Census Bureau, to exclude undocumented immigrants from the 2020 population data used to apportion the U.S. House of Representatives. Plaintiffs—non-profit organizations, individual cities, and U.S. citizens—contend that the Memorandum violates Article I, § 2 of the U.S. Constitution as amended by § 2 of the Fourteenth Amendment; the Equal Protection guarantees of the Fifth and Fourteenth Amendments; and two federal statutes, 2 U.S.C. § 2a(a) and 13 U.S.C. § 141. Am. Comp. ¶¶ 176-210, ECF No. 28. On August 11, 2020, Plaintiffs moved for the appointment of a three-judge court, pursuant to 28 U.S.C. § 2284. Defendants—President Trump, the Secretary of Commerce, and the Director of the Census Bureau—do not oppose this request. Defs. Resp., ECF No. 30.

Section 28 U.S.C. § 2284(a) requires that “[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” It further

mandates that when a request for a three-judge panel is received, “the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge.” Id. § 2284(b)(1).

Here, Plaintiffs claim that “[b]y purporting to exclude undocumented immigrants from the basis for congressional apportionment, the President has violated Art. I, § 2, cl. 3 of the U.S. Constitution and Section 2 of the Fourteenth Amendment to the U.S. Constitution,” Compl.

¶ 179, which is squarely a challenge to the “the constitutionality of the apportionment of congressional districts.” 28 U.S.C. § 2284(a); see also Fed’n for Am. Immigration Reform v. Klutznick, 486 F. Supp. 564, 576–77 (D.D.C.) (“This court is convened as a three-judge court to consider the constitutionality of the 1980 census, due to be conducted within a few weeks, insofar as it will fail to establish the number of illegal aliens in the country, or the states and districts within which they live.”), appeal dismissed, 447 U.S. 916 (1980). Thus, this Court is obligated to notify the chief judge of the D.C. Circuit that a three-judge panel is required.

A three-judge panel is also required for a second reason. Plaintiffs allege that the Memorandum violates 13 U.S.C. § 195 because it requires the use of statistical sampling. Compl. ¶¶ 203-10. Congress has mandated that claims alleging unlawful use of statistical sampling in the census “shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28, United States Code.” Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, §§ 209(b), (e)(1), 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note). Therefore, convening of a three-judge court is also “otherwise required by Act of Congress” within the meaning of 28 U.S.C. § 2284(a).

For the foregoing reasons, it is hereby

ORDERED that [29] [Plaintiffs' Motion for a Three-Judge Panel is GRANTED. The Court further requests that the Chief Judge of the U.S. Court of Appeals for the D.C. Circuit convene a three-judge court.




CHRISTOPHER R. COOPER
United States District Judge

Date: August 20, 2020